

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY )  
GIBSON SOLAR LLC FOR CERTAIN )  
DETERMINATIONS BY THE COMMISSION )  
WITH RESPECT TO ITS JURISDICTION OVER ) CAUSE NO. 45500  
PETITIONER'S ACTIVITIES AS A )  
GENERATOR OF ELECTRIC POWER )

**GIBSON SOLAR LLC'S SUBMISSION OF PROPOSED ORDER**

Petitioner, Gibson Solar LLC, by counsel, hereby files its proposed order in this proceeding.

Respectfully submitted,



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Attorneys for Petitioner,  
Gibson Solar LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served by electronic service on the following this 3<sup>rd</sup> day of May, 2021.

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\_\_\_\_\_  
An attorney for Petitioner,  
Gibson Solar LLC

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**PROPOSED ORDER**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David L. Ober, Commissioner**

**Lora L. Manion, Administrative Law Judge**

On February 19, 2021, Gibson Solar LLC (“Petitioner”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause for certain determinations, declinations of jurisdiction, and approvals relating to its proposed construction of the Gibson Solar Project, a solar electric generation facility located entirely in the unincorporated areas of Gibson County, Indiana (the “Facility”), in accordance with Ind. Code ch. 8-1-2.5. Petitioner also filed the direct testimony and attachments of Tiago Sabino Dias, Executive Vice President of Arevon Development Company (ServiceCo), LLC (“Arevon”).

On April 9, 2021, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed the direct testimony of Cynthia M. Armstrong, Senior Utility Analyst in the Electric Division.

On April 19, 2021, Petitioner filed its Notice of Intent Not to File Rebuttal Testimony.

The Commission noticed this matter for an evidentiary hearing at 10:00 a.m. on May 4, 2021, in Hearing Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A Docket Entry was issued on April 28, 2021, advising that due to the ongoing COVID-19 pandemic, the hearing would be conducted via WebEx and providing related participation information. Petitioner and the OUCC by counsel participated in the hearing via teleconference, and the testimony and exhibits of Petitioner and the OUCC were admitted into the record without objection.

Based upon the applicable law and evidence, the Commission now finds:

**1. Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. As discussed herein, Petitioner intends to engage in activity that would qualify it as a “public utility” under Ind. Code § 8-1-2-1 and as an “energy utility” under Ind. Code § 8-1-2.5-2. The Commission may decline to exercise, in whole or in part, its jurisdiction

over an energy utility pursuant to Ind. Code § 8-1-2.5-5. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this case.

**2. Petitioner's Characteristics.** Petitioner Gibson Solar LLC and CD Clean Energy and Infrastructure VII JV, LLC ("CD Fund VII"), both Delaware limited liability companies, are the developers and constructors of the Gibson Solar Project, herein referred to as the "Facility". Petitioner is a wholly owned indirect subsidiary of CD Fund VII. Arevon is charged with overseeing the efforts of Petitioner and CD Fund VII to develop and construct the Facility. Arevon is a Delaware limited liability company with its principal place of business at 850 New Burton Road, Suite 201, Dover, Delaware. Arevon is also a wholly owned indirect subsidiary of CD Fund VII, and CD Fund VII and its subsidiaries were formed to invest, own, and operate renewable energy projects in North America. The ultimate parent corporation of CD Fund VII is Capital Dynamics, Inc. ("Capital Dynamics"), the manager of a portfolio of over 100 power projects generating 7.3 gigawatt ("GW") across the United States and Europe.

**3. Relief Requested.** Petitioner requested the Commission decline to exercise its jurisdiction over it pursuant to Ind. Code § 8-1-2.5-5 as it pertains to the construction, ownership, operation, and any other activity in connection with the Facility. Petitioner will generate electricity from solar energy, a renewable energy resource, for sale in the wholesale power market.

**4. Petitioner Evidence.** Tiago Sabino Dias testified Petitioner is an affiliate of Capital Dynamics, who has extensive experience owning and operating a fleet of solar and wind projects. Mr. Dias testified Capital Dynamics is one of the largest renewable energy investment managers in the world with \$6.5 billion assets under management. Capital Dynamics currently manages power generation across more than 100 projects. Additionally, approximately 3 GW of its US-based solar projects are under development and construction. Mr. Dias testified Capital Dynamics signed a Development Services Agreement with Tenaska, Inc. to assist with the development of Capital Dynamics' projects within the territory of Midcontinent Independent System Operator, Inc. ("MISO").

Mr. Dias testified that CD Fund VII and Capital Dynamics would provide Petitioner with all the necessary financial, technical, and managerial expertise to construct and operate the Facility and would operate the Facility in a commercially reasonable manner in accordance with good utility practice. A redacted 2019 financial report for CD Fund VII was submitted as Petitioner Exhibit 1, Attachment TSD-9.

Mr. Dias testified Petitioner anticipates that the Facility would be capable of generating up to approximately 280 megawatts of alternating current ("MW AC") electricity from approximately 650,000 solar panels over an approximately 2,250-acre solar generation facility. The Facility would be interconnected to Duke Energy's Gibson-Francisco 345 kilovolt ("kV") transmission line approximately 15 miles east of the Gibson Substation in Gibson County, Indiana. A preliminary site map was submitted as Petitioner' Exhibit 1, Attachment TSD-2. The power output from the Facility is contracted to be sold exclusively to Northern Indiana Public Service Company ("NIPSCO"). Petitioner would self-certify the Facility as an exempt wholesale generator and apply for market-based rate authority under rules and regulations of the Federal Energy Regulatory Commission ("FERC"). Therefore, its wholesale rates for power would be subject to FERC regulation.

Mr. Dias testified the Facility would generate electricity via solar modules (i.e., panels) located within a fenced solar panel field. The solar field would include mounted photovoltaic ("PV") modules

and Power Conversion Stations (“PCS”) that would be configured in array blocks. Each PCS would contain an inverter and a medium voltage transformer, as well as other electrical equipment. Each PCS would also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment would be housed in protective enclosures on concrete pads, on precast vaults, or on posts. The collection system would transport the electricity from each array block to an onsite substation via underground 34.5 kV cabling. The onsite substation would contain a main power transformer to transform voltage from 34.5 kV to 345kV. The Point of Interconnection would be a 345kV terminal at the ring bus of a new switching station where the Facility’s generator lead line would terminate.

Mr. Dias testified Petitioner already has an off taker for the electricity produced by the Facility. NIPSCO and Petitioner entered into a 22-year purchase power agreement (“PPA”) for all the Facility’s electrical output. The PPA’s term commences upon execution of the PPA, i.e., November 24, 2020, and expires on the 22<sup>nd</sup> anniversary of the Commercial Operation Date (“COD”), anticipated in Q2 2023.

Mr. Dias testified that a study performed by Quanta Technology, LLC, an expert in electric transmission matters, showed that the Facility’s queue position, J1295, does not have any impact on the MISO system. The Network Resource Interconnection Service (“NRIS”) analysis identified few overloads due to J1295 but these facilities are overloaded due to contributions from other generators in the queue, as well, and J1295 has a minimal impact to the system. A summary report of the study was submitted as Petitioner Exhibit 1, Attachment TSD-7. Mr. Dias also testified that Petitioner, Duke Energy, and MISO have not yet entered a Generator Interconnection Agreement (“GIA”) as the Facility is currently within the MISO DPP Phase I. Per the current MISO schedule, Petitioner anticipates a GIA would be executed no later than May 5, 2022, and Petitioner will late-file a copy of the GIA in this Cause or will file a copy as an attachment to a post-Order report.

Mr. Dias testified Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. Petitioner conducted a natural resources inventory and is coordinating with the U.S. Fish and Wildlife Service (“USFWS”) and the Indiana Department of Natural Resources (“IDNR”) on potential impacts to federal and state threatened and endangered species. The natural resources inventory identified wooded areas throughout 467 acres that may be potential habitat for federal and state threatened and endangered bat species. Petitioner will avoid and minimize impacts to federally- and state-listed threatened and endangered species and their habitat, as practical, and coordinate with coordinate with the USFWS and IDNR if impacts are unavoidable.

Mr. Dias testified Petitioner submitted evidence that it has complied or would comply with local zoning and land use requirements, has obtained or would obtain all construction, grading, and wastewater permits, and would not rely on the public utility exemption from local zoning regulation. Mr. Dias testified that the Gibson County Comprehensive Land Use Planning (Zoning) Ordinance (“Ordinance”) may be amended as to solar installations, but that the Facility would comply with all local land use requirements. Mr. Dias testified that Petitioner is in the process of negotiating an Economic Development Agreement with Gibson County. Petitioner will establish a decommissioning plan and a decommissioning security for the Facility as required by the amended Ordinance. The Decommissioning Security will ensure the Facility is properly decommissioned upon the end of the project life or abandonment. Mr. Dias testified Petitioner may need to obtain the following Indiana

permits and determinations: (1) a permit under Title 327 of the Indiana Administrative Code for the discharge of construction-related storm water, also known as a Rule 5 Permit; and (2) Indiana Department of Transportation (“INDOT”) permits to allow the Facility’s electric lines and other equipment to cross state highways and for driveways, road exits, and similar infrastructure.

Mr. Dias also testified Petitioner may also be required by federal law to do the following: (1) self-certify as an exempt wholesale generator and apply for market-based rate authority under FERC’s rules and regulations; (2) develop and implement a federal spill prevention, control, and countermeasure plan; (3) obtain a Clean Water Act, Section 404 General Permit from the United States Army Corps of Engineers (“USACE”) for impacts to wetlands or other waters of the United States; and (4) obtain any required USFWS permits.

Mr. Dias testified the Facility would not use water in any significant quantities and it would have negligible or no impact on local water supplies. Water would be used during construction and removal of project facilities primarily for dust control and concrete mixing. After construction is completed, water may be used for panel washing, if necessary.

Mr. Dias explained Petitioner seeks to retain the right to use the public right-of-way within the Facility site to place collector lines and transmission lines in the public right-of-way. Additionally, retention of this right would clarify issues surrounding use of the public right-of-way for road crossings. Mr. Dias testified this is similar to the treatment given to other renewable energy projects in Indiana.

Mr. Dias also testified that Petitioner agrees to submit the status reports that have typically been imposed on similar generation projects in Indiana, including solar and wind projects, and he listed the initial and subsequent reports to be submitted.

Mr. Dias concluded that he believes the public interest would be served in several ways through the addition of the electric generating capacity represented by the Facility. Mr. Dias testified the public needs electricity as demonstrated by the fact that Petitioner has already secured the PPA with the off taker, NIPSCO. Petitioner’s proposed solar project represents one of the most environmentally friendly means of generating electricity. The public in Indiana would benefit from the efficiencies that flow from the Facility’s proximity to the source of generation because it is generally advantageous for load not to be located too far from its source. Mr. Dias testified landowners in Gibson County would receive economic benefits from the placement of solar facilities on their properties. Local taxing bodies would receive new tax revenues. The Facility would provide additional economic benefit by creating a need for 200 full-time construction jobs, and four full-time operations and maintenance jobs. Mr. Dias testified solar energy provides greater energy security and would diversify Indiana’s electricity generation portfolio, protecting against volatile price spikes and risks from relying too heavily on just a few sources of generation. Mr. Dias testified solar energy is a domestic source of fuel, harnessed over Indiana lands, and not subject to the geopolitical complexities of foreign energy sources. He explained use of farmland for solar purposes has the incidental benefit of enhancing the land’s productivity in the long term by allowing the land underneath to lay fallow during the operational period, which increases the quality of the soil by allowing nutrients to return to and stay in the soil, reduces erosion, and improves drainage, so that once the solar facility is returned to farmland, the land would be more productive. Mr. Dias testified that Gibson County will benefit from the tax revenues from the Facility. The Facility will pay an estimated \$67 million in real and personal (utility distributable) property taxes over the lifetime of the Facility (this number does not account for any abatement of taxes that may be

granted by Gibson County). Finally, Mr. Dias testified that the benefit renewable energy projects provide to the public interest is underscored by support from the local community. Petitioner has signed land agreements with 18 landowners who will be able to diversify their income through the Facility. In addition, Paul Waters, the President and CEO of the Gibson County Economic Development Corporation, Mary Key, Gibson County Commissioner, and Stephen E. Bottoms, now a former Gibson County Commissioner, all expressed their support of the Facility and the significant proposed investment in Gibson County that the Facility represents. Copies of the aforementioned letters of support were submitted as Petitioner Exhibit 1, Attachment TSD-8.

**5. OUCC Evidence.** Cynthia M. Armstrong testified that the OUCC does not oppose Petitioner's construction of the Facility and request for relief. She recommended that the Commission's Order declining jurisdiction include reporting requirements, as proposed by Petitioner, on the status of the Facility's development.

Ms. Armstrong explained that when developers seek Commission declination of jurisdiction, the OUCC expects the developer will have made reasonable progress toward securing the necessary approvals from local, state, and federal officials prior to filing its request with the Commission. She stated that while the Project has not progressed in the pre-development stage that the OUCC generally likes to see before developers seek declination, Petitioner has conducted preliminary site surveys and environmental studies and attempted to determine possible interconnection system impacts. She further noted that the Project may receive approval for tax abatement soon after the OUCC files its testimony, and it has begun the local approval process, in which it appears Gibson County Commissioners support the Project.

She concluded that Petitioner would fall under the regulation of other local, state, and federal regulatory bodies protecting the public interest regarding the Facility's future operation and wholesale energy transactions. Ms. Armstrong testified further Commission regulation would be duplicative of other regulatory bodies, could complicate and cause inefficiencies in Petitioner's development and operation of the Facility, could impede Petitioner's ability to compete with other wholesale solar providers, and would be an unnecessary use of the Commission's resources.

**6. Discussion and Findings.** If the Commission finds that Petitioner is a public utility for the purposes of Indiana's Utility Power Plant Construction Act, Ind. Code ch. 8-1-8.5 (the "Power Plant Act"), then Petitioner would be considered an "energy utility" as defined by Ind. Code § 8-12.5-2. The Commission may decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, including its jurisdiction under the Power Plant Act, to issue certificates of public convenience and necessity for the construction of the Facility. For the Commission to decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, the Commission must first assert jurisdiction over Petitioner.

The Power Plant Act in Ind. Code § 8-1-8.5-1(a) defines "public utility" to mean a: (1) public, municipally owned, or cooperatively owned utility; or (2) joint agency created under Indiana Code ch. 8-1-2.2. Petitioner is a limited liability company that will generate electricity, some of which may ultimately be consumed by Indiana residents. The Commission has previously asserted jurisdiction over investor-owned public utilities pursuant to Ind. Code ch. 8-1-8.5. *See, e.g., Indianapolis Power & Light Co.*, Cause No. 43235, 2007 WL 8420716 (IURC June 13, 2007). Considerations in determining whether an entity is a public utility, Petitioner's property "is used in a business that is public in nature and not one

that is private.” See *Foltz v. City of Indianapolis*, 130 N.E.2d 650, 659 (Ind. 1955) (“*Foltz*”). Petitioner’s business is “impressed with a public interest” and would render service “of a public character and of public consequence and concern” as also considered in *Foltz. Id.*

The Commission must also determine that Petitioner satisfies the definition of “public utility” found in Ind. Code § 8-1-2-1. The evidence establishes that Petitioner’s ownership, development, financing, construction, and operation of the Facility is for the purpose of sale of the power generated by that plant in the wholesale market to public utilities, energy service providers, and power marketers within and outside of Indiana. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. See, e.g., *Benton County Wind Farm, LLC*, Cause No. 43068, 2006 WL 4400582 (IURC Dec. 6, 2006) (“*Benton County*”). In *Benton County*, the Commission specifically found that it had jurisdiction over a wind energy generator with wholesale operations such as Petitioner. Consequently, based upon our application of the statutes and precedents discussed herein to the facts and circumstances in this case, we find that Petitioner is a “public utility” within the meaning of Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1 and is an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2 for purposes of the ownership, development, financing, construction, and operation of the Facility.<sup>1</sup>

When the Commission concludes that Petitioner is a “public utility” as defined in the Public Service Commission Act and in the Power Plant Act, the Indiana Code authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an “energy utility” if certain conditions are satisfied. In particular, Indiana Code provides that the Commission may enter an Order, after notice and hearing, that the public interest requires the Commission “to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over ... the energy utility ...” Ind. Code § 8-12.5-5(a).

In determining whether the public interest will be served by a declination of jurisdiction, the Commission will consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
- (2) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility’s customers, or the state.
- (3) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

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<sup>1</sup> Ind. Code § 8-1-2.5-2 defines “energy utility” to mean, among other things, a public utility or municipally owned utility within the meaning of Ind. Code § 8-1-2-1. Because we have determined that Petitioner is a “public utility” under Ind. Code § 8-1-2-1, Petitioner is also an “energy utility.”



Ind. Code § 8-1-2.5-5(b).

The evidence in this Cause demonstrates that Petitioner does not intend, nor does it request authority, to sell the electricity generated by the Facility to the general public or to any retail customer. Instead, the power would be generated solely for resale subject to the jurisdiction of FERC under the provisions of the Federal Power Act, 16 U.S.C. § 824 *et seq.* Petitioner has indicated that it would operate the Facility in a manner consistent with good utility practice. Further, the costs of the Facility would not be recovered through a rate base/rate of return or other process typically associated with public utility rates.

Ms. Armstrong opined that further Commission regulation: (1) would be duplicative of other regulatory bodies; (2) could complicate and cause inefficiencies in Petitioner's development and operation of the Facility; (3) could impede Petitioner's ability to compete with other wholesale solar providers; and (4) would be an unnecessary use of the Commission's resources.

As part of the Commission's public interest analysis regarding any proposed declination of jurisdiction, we must evaluate facilities such as Petitioner's based on several factors, as discussed in the following sections.

**A. Location.** As part of its public interest determination, the Commission may consider whether the location of a proposed facility is compatible with the surrounding land uses by evaluating and considering evidence of compliance with local zoning and land use requirements. In deciding whether to decline jurisdiction, the Commission has the authority to consider whether the public interest would be served by the Facility being in its planned location.

In making such a determination, the Commission must consider the potential for adverse effects on Indiana "electricity suppliers" as that term is used in Ind. Code § 8-1-2.3-2(b), their customers, or local communities. Indiana statutes regarding surface and groundwater rights and obligations, including those establishing the authority of the Indiana Natural Resources Commission, Ind. Code § 14-25-7-15, do not limit the Commission's jurisdiction to make such determinations under the public interest standard of Ind. Code ch. 8-1-2.5 or the public convenience and necessity standard of Ind. Code § 8-1-8.5-5(b)(3). If a proposed new generating facility would significantly and negatively impact an electricity supplier, its consumers, or a local community, the Commission may refuse to decline jurisdiction under Ind. Code chs. 8-1-2.5 and 8-1-8.5. Based on the factors described below, the Commission finds that the Facility's proposed location is compatible with the surrounding land uses and the Facility would not significantly and negatively impact an electricity supplier, its consumers, or a local community.

**i. Local Zoning and Permitting Requirements.** Mr. Dias testified Petitioner submitted evidence that it has complied or would comply with local zoning and land use requirements, has or would obtain all construction, grading, and wastewater permits, and would not rely on the public utility exemption from local zoning regulation. Mr. Dias testified Gibson County may amend their solar Ordinance, but that the Facility would comply with all local land use requirements. Mr. Dias further testified that Petitioner is in the process of negotiating an Economic Development Agreement with Gibson County.

ii. **Land Use and Solar Resources.** Mr. Dias testified Petitioner is an affiliate of Capital Dynamics, which has extensive experience with owning and operating a fleet of solar and wind projects, consisting of over 100 projects in the United States and Europe. Further, Capital Dynamics has signed a Development Services Agreement with Tenaska, Inc., to assist with development of Capital Dynamics' MISO portfolio, including the Facility, adding to the extensive experience that Capital Dynamics already has in place. Based on the evidence presented, it appears that Petitioner, utilizing its experience in developing other solar projects throughout the United States has determined that the solar resource at the Facility site is sufficient for the development of an economically viable project. A preliminary site map that reflects the approximate locations of these facilities was submitted as Petitioner Exhibit 1, Attachment TSD-2.

iii. **Water Use and Supply.** Mr. Dias testified that the Facility would not have significant water use and it would have negligible or no impact on local water supplies. Water would be used during construction and removal of project facilities, primarily for dust control and concrete mixing. After construction is completed, water may be used for panel washing, if necessary. Therefore, the evidence presented demonstrates that area water use and supplies would not be adversely affected by the Facility.

iv. **Transmission Interconnection.** Mr. Dias testified the Facility is expected to interconnect with Duke Energy transmission system in Gibson County, Indiana on the Gibson-Francisco 345kV transmission line approximately 15 miles east of the Gibson Substation in Gibson County, Indiana. The Facility would generate electricity via solar modules located within a fenced solar panel field. The solar field would include mounted PV modules and PCS that would be configured in array blocks. Each PCS contains an inverter and a medium voltage transformer as well as other electrical equipment. Each PCS would also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment would be housed in their respective protective enclosures on concrete pads or precast vaults, or on posts. The collection system would transport the electricity from each array block to an onsite substation via underground 34.5 kV cabling. The onsite substation would contain a main power transformer to transform voltage from 34.5 kV to 345kV. The Point of Interconnection would be a 345kV terminal at the ring bus of a new switching station where the Facility's generator lead line would terminate.

Mr. Dias testified that a study performed by Quanta Technology, LLC, an expert in electric transmission matters, showed that the Facility's queue position, J1295, does not have any impact on the MISO system. The Network Resource Interconnection Service ("NRIS") analysis identified few overloads due to J1295 but these facilities are overloaded due to contributions from other generators in the queue, as well, and J1295 has a minimal impact to the system. A summary report of the study was submitted as Petitioner Exhibit 1, Attachment TSD-7. Mr. Dias also testified that Petitioner, Duke Energy, and MISO have not yet entered a Generator Interconnection Agreement ("GIA") as the Facility is currently within the MISO DPP Phase I. Per the current MISO schedule, Petitioner anticipates a GIA would be executed no later than May 5, 2022, and Petitioner will late-file a copy of the GIA in this Cause or will file a copy as an attachment to a post-Order report.

The power output from the Facility would be sold exclusively to NIPSCO. Petitioner would self-certify the Facility as an exempt wholesale generator and apply for market-based rate authority under FERC rules and regulations. Therefore, its wholesale rates for power would be subject to FERC regulation.

v. **Additional Permitting and Environmental Issues.** Ms. Armstrong testified that Petitioner would fall under the regulation of other local, state, and federal regulatory bodies protecting the public interest regarding the Facility's future operation and wholesale energy transactions. Mr. Dias indicated in his testimony that Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. Petitioner conducted a natural resources inventory and is coordinating with USFWS and INDR on potential impacts to federal and state threatened and endangered species. Petitioner will avoid and minimize impacts to federally- and state-listed threatened and endangered species and their habitat, as practical, and coordinate with coordinate with the USFWS and IDNR if impacts are unavoidable.

Petitioner would also obtain construction storm water, county and municipal building, construction grading, and wastewater permits as needed. Petitioner and Gibson County are in the process of negotiating an Economic Development Agreement.

To the extent required by state law, Petitioner may need to obtain the following permits and determinations: (1) a permit under Title 327 of the Indiana Administrative Code for the discharge of construction-related storm water, also known as a Rule 5 Permit; and (2) INDOT permits to allow the Facility's electric lines and other equipment to cross state highways and for driveways, road exits, and similar infrastructure.

Petitioner may also be required by federal law to do the following: (1) self-certify as an exempt wholesale generator and apply for market-based rate authority under FERC's rules and regulations; (2) develop and implement a federal spill prevention, control, and countermeasure plan; (3) obtain a Clean Water Act, Section 404 General Permit from the USACE for impacts to wetlands or other waters of the United States; and (4) obtain any required USFWS permits.

vi. **Using the Public Right-of-Way.** Mr. Dias testified Petitioner seeks to retain the right to use the public right-of-way within the Facility site. Retention of the use of the public right-of-way would allow Petitioner to place collector lines and transmission lines in the public right-of-way and would clarify issues surrounding use of the public right-of-way for road crossings. Mr. Dias testified this is similar to the treatment given to other renewable energy projects in Indiana. Based upon the evidence presented, we find Petitioner's request for limited use of the public right-of-way to be reasonable. Petitioner would retain the right to use the public right-of-way as identified in its evidence.

B. **Need.** The Commission must determine if the development of additional generating capacity will serve the public interest. As explained below, the Commission finds that the evidence presented demonstrates a reasonable expectation of need for the Facility and finds that its construction will serve the public interest.

Petitioner already has an off taker for the electricity produced by the Facility. NIPSCO and Petitioner entered into a 22-year PPA for the entirety of the Facility's electrical output. The PPA's term commences upon execution of the PPA, i.e., November 24, 2020, and expires on the 22<sup>nd</sup> anniversary of the COD, anticipated in Q2 2023.

Mr. Dias concluded that he believes the public interest would be served in several ways through the addition of the electric generating capacity represented by the Facility. Mr. Dias testified the public needs electricity as demonstrated by the fact that Petitioner has already secured the PPA with the off

taker, NIPSCO. Petitioner's proposed solar project represents one of the most environmentally friendly means of generating electricity. The public in Indiana would benefit from the efficiencies that flow from the Facility's proximity to the source of generation because it is generally advantageous for load not to be located too far from its source. Mr. Dias testified landowners in Gibson County would receive economic benefits from the placement of solar facilities on their properties. Local taxing bodies would receive new tax revenues. The Facility would provide additional economic benefit by creating a need for 200 full-time construction jobs, and four full-time operations and maintenance jobs. Mr. Dias testified solar energy provides greater energy security and would diversify Indiana's electricity generation portfolio, protecting against volatile price spikes and risks from relying too heavily on just a few sources of generation. Mr. Dias testified solar energy is a domestic source of fuel, harnessed over Indiana lands, and not subject to the geopolitical complexities of foreign energy sources. He explained use of farmland for solar purposes has the incidental benefit of enhancing the land's productivity in the long term by allowing the land underneath to lay fallow during the operational period, which increases the quality of the soil by allowing nutrients to return to and stay in the soil, reduces erosion, and improves drainage, so that once the solar facility is returned to farmland, the land would be more productive. Mr. Dias testified that Gibson County will benefit from the tax revenues from the Facility. The Facility will pay an estimated \$67 million in real and personal (utility distributable) property taxes over the lifetime of the Facility (this number does not account for any abatement of taxes that may be granted by Gibson County). Finally, Mr. Dias testified that the benefit renewable energy projects provide to the public interest is underscored by support from the local community. Petitioner has signed land agreements with 18 landowners who will be able to diversify their income through the Facility. In addition, Paul Waters, the President and CEO of the Gibson County Economic Development Corporation, Mary Key, Gibson County Commissioner, and Stephen E. Bottoms, now a former Gibson County Commissioner, all expressed their support of the Facility and the significant proposed investment in Gibson County that the Facility represents. Copies of the aforementioned letters of support was submitted as Petitioner Exhibit 1, Attachment TSD-8.

Based on the evidence presented, we find that Petitioner's proposed development of additional generating capacity through the Facility is supported by the evidence and will serve the public interest.

**C. Financing and Management.** To ensure that Indiana consumers are not adversely affected by the proposed development of generation plants in Indiana, developers must demonstrate to the Commission that the financial structure of a proposed project would not jeopardize retail electric supply. In assessing a developer's financing to ensure the viability of a proposed project, the Commission may consider the developer's ability to finance, construct, lease, own, and operate other generating facilities in a commercially responsible manner. As necessary, the Commission may also consider the specific method proposed to finance a particular project.

Petitioner is an affiliate of CD Fund VII and Capital Dynamics and has the financial strength and ability to secure financing for the Facility. A redacted 2019 financial report for CD Fund VII was submitted as Petitioner Exhibit 1, Attachment TSD-9. Mr. Dias testified that CD Fund VII and Capital Dynamics would provide Petitioner with all of the necessary financial, technical, and managerial expertise to construct and operate the Facility and that Petitioner would operate the Facility in a commercially reasonable manner in accordance with good utility practice.

Based on the evidence presented, the Commission finds that Petitioner has the ability to finance, construct, and manage the Facility.

**D. Affiliate Transactions.** In addition to determining whether the public interest would be served if the Commission declines jurisdiction, the Commission also must consider what actions it must take to ensure that the public interest is served throughout the commercial life of the Facility. Specifically, the Commission must determine the extent to which it must reserve its authority over Petitioner's activities involving affiliate transactions and transfers of ownership. To ensure that the Commission's declination of jurisdiction over an "energy utility" is in the public interest, the Commission must be assured that adequate consumer protections are in place, should an "energy utility" subsequently become an affiliate, as defined in Ind. Code § 8-1-2-49, of any regulated Indiana retail utility. While the Commission is declining jurisdiction over Petitioner's affiliate transactions initially, the Commission reserves its authority to regulate Petitioner should it become an affiliate of any regulated Indiana retail utility. Accordingly, Petitioner must inform the Commission and the OUCC at the time it becomes an affiliate of any regulated retail utility operating in Indiana.

Petitioner shall obtain prior Commission approval with respect to the sale of any electricity to any affiliated, regulated Indiana retail electric utility. The Commission notes that it retains certain authority under Section 201 of the Federal Power Act to examine Petitioner's books, accounts, memoranda, contracts, and records consistent with the limitations contained therein. 16 U.S.C. § 824 (2005).

**E. Transfers of Ownership.** The Commission reserves its jurisdiction under Ind. Code § 8-1-2-83 and requires Petitioner to obtain prior Commission approval of any transfer of assets owned by Petitioner. Petitioner, however, shall not be required to seek prior approval, but shall provide written notice to the Commission and the OUCC of any transfers of ownership of Facility assets or ownership interests in Petitioner involving: (1) the grant of a security interest, mortgage, deed of trust, or other encumbrance to a bank or other lender or collateral agent, administrative agent or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing), or any investor, guarantor, equipment supplier, or financing entity; (2) a debtor in possession; or (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner or ownership interests in Petitioner. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility and (2) the successor satisfies the same terms and conditions imposed on Petitioner as set forth in this Order.

**7. Financial Assurance.** Mr. Dias testified that Petitioner is in the process of negotiating an Economic Development Agreement with the local Gibson County government and that Petitioner will establish a decommissioning plan and a decommissioning security for the Facility as required by the amended Ordinance to be adopted by Gibson County. The Decommissioning Security will ensure the Facility is properly decommissioned upon the end of the project life or abandonment. As a condition of this Order, the Commission requires Petitioner to maintain financial assurance to ensure that the Facility will be properly decommissioned at the end of its serviceable life. The decommissioning plan provides assurance that the Facility's facilities are properly decommissioned at the end of the Facility's useful life or upon facility abandonment. Petitioner must provide a cost estimate for demolition and removal of the Facility's facilities. To guard against the unlikely and worst-case possibility that Petitioner will be unable to meet its obligation to remove the solar project, a decommissioning security (a performance or surety bond) will be established. The decommissioning security is intended primarily to cover the cost of removing project infrastructure and restoration of the leased premises to their

original condition. Detail regarding the type and amount of the security and method of calculating will be specified in the decommissioning plan. Petitioner provided evidence that it will provide such security as required.

Petitioner shall notify the Commission when its decommissioning security has been established, including the form and amount of the security. We find that the financial assurance requirements set forth in the Decommissioning Agreement are sufficient to satisfy this requirement.

**8. Reporting Requirements.** The OUCS recommended the Commission's Order declining jurisdiction include reporting requirements regarding the status of the Facility's development as proposed by Petitioner. In addition to the foregoing requirements, as a condition of this Order and our continued declination of jurisdiction, Petitioner must file Annual Reports with the Commission as provided in Ind. Code § 8-1-2-49, and provide any other information requested by the Commission. These reporting requirements are intended to ensure that the Commission obtains reliable, up-to-date information in a timely manner necessary to carry out its statutory obligations. A responsible officer of Petitioner shall verify all reports, and Petitioner shall file the reports under this Cause within the timeframes prescribed herein.

The following reports shall be prepared and filed by Petitioner:

**A. Initial Report.** Petitioner's initial quarterly report, due within 30 days after the date of this Order, shall provide the following information, to the extent it is known and available:

- (1) Facility ownership and name(s) of the Facility;
- (2) Name, title, address and phone number(s) for primary contact person(s) for the Facility;
- (3) Number and location of solar panels deployed;
- (4) Anticipated total output of Facility;
- (5) Manufacturer, model number, and operational characteristics of panels;
- (6) Connecting utility(s);
- (7) Copy of any Interconnection System Impact Studies prepared by MISO;
- (8) Expected in-service (commercial operation) date;
- (9) An estimate of the engineering/construction timeline and critical milestones for the Facility;
- (10) The status of the GIA with MISO; and
- (11) The information listed below in the Subsequent Reports section to the extent such information is available.

**B. Subsequent Reports.** Petitioner's subsequent reports shall be filed within 30 days of the end of each calendar quarter until the quarter that occurs after the COD is achieved and that immediately precedes the Annual Report filing date of each year. Thereafter, subsequent reports should be filed as an addendum to Petitioner's Annual Report. Subsequent reports should include the following information:

- (1) Any changes of the information provided in the Initial Report;
- (2) Any reports of Interconnection System Impact Studies not previously submitted to the Commission;

- (3) Copy of the GIA as filed with FERC;
- (4) Notice of the establishment of an independent financial instrument, including its form and amount;
- (5) Achievement of construction milestones described in the GIA and such events as the procurement of major equipment, the receipt of major permits material to the construction and operation of the Facility, construction start-up, initial energization, and commercial operation; and
- (6) When commercial operation is achieved, the nameplate capacity, term and identity of a purchaser for any contracts then existing for utility sales, contingency plans (if any) detailing response plans to emergency conditions as required by state or local units of government, the interconnecting transmission owner and/or MISO, and the Facility's certified (or accredited) dependable capacity rating.

**C. Additional Requirements.** In the event that Petitioner intends to materially increase or decrease or otherwise materially change the Facility's capacity or operation, the owner must provide the Commission with at least 30 days' notice prior to the change, and any party wishing to protest such change must file an objection under this Cause within 10 days of the notification of project modification. Petitioner shall notify the Commission if it modifies or suspends the Facility under the terms of the GIA and does not reinstitute work within three years following commencement of such suspension. If the Commission determines that Petitioner: (1) has failed to enter into an agreement pursuant to MISO generator interconnection procedures; (2) has suspended the Facility under the terms of the GIA and has not reinstated work within three years following commencement of such suspension; or (3) has otherwise suspended its efforts to complete the Facility within three years of this Order, the Commission may, following notice to Petitioner, issue an Order terminating its declination of jurisdiction.

**9. Conclusion.** Pursuant to the provisions set forth in Ind. Code § 8-1-2.5-5, the Commission finds that declining to exercise its jurisdiction over Petitioner in this Cause will facilitate the immediate construction of the proposed Facility and add generation capacity in Indiana. This should be beneficial for those public utilities that may indirectly have access to the power produced and to the State of Indiana. We further conclude that declining to exercise our jurisdiction over Petitioner will promote energy utility efficiency. In addition, Petitioner has demonstrated that it has the technical, financial, and managerial capabilities to construct and operate the proposed Facility. It has also shown that the wholesale market for electricity in Indiana will benefit from the addition of the Facility's generating capacity, and, therefore, its market entry is reasonable.

Accordingly, based on these findings and the additional requirements contained in this Order, the Commission believes that a declination of jurisdiction over Petitioner as an energy utility, except in the areas in which we reserve jurisdiction that are identified above, is in the public interest. While the Commission is not declining jurisdiction for a particular term of years, the Commission does not intend to reassert jurisdiction absent circumstances affecting the public interest. Petitioner is not granted authority to offer its power for sale to the general public. Therefore, any revenue that it derives from the sale of electricity for resale by the purchaser is not subject to the public utility fee.

If the Commission determines that Petitioner either: (1) has failed to commence construction of the Facility within the timeframe provided under this Order; (2) is no longer diligently pursuing the

commencement of construction of the Facility; or (3) has not completed construction of the Facility under the terms of the GIA, then the Commission may, following notice to Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein. Petitioner shall file status reports with the Commission and the OUCC when construction begins and shall continue providing such reports until commercial operation of the Facility begins. Petitioner will satisfy the reporting requirements outlined above before commercial operation of the Facility begins. Petitioner shall also file with the Commission any Annual Report required to be filed with FERC and provide the Commission such other information as we may from time to time require from other Indiana public utilities.

**10. Confidential Information.** On February 19, 2021, Petitioner filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information in this Cause, which was supported by an affidavit from Tiago Sabino Dias showing that certain information to be submitted to the Commission was trade secret information as defined in Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. The Presiding Officers issued a Docket Entry on April 14, 2021, finding the information should be held confidential on a preliminary basis, after which the information was submitted under seal. After review of the information and consideration of the affidavit, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held confidential and protected from public access and disclosure by the Commission.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Petitioner is a “public utility” within the meaning of Ind. Code §§ 8-1-8.5-1 and 8-12-1 and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2.
2. The Facility is a “utility” within the meaning of Ind. Code § 8-1-2-1.
3. The Commission declines to exercise its jurisdiction over Petitioner and its construction, operation, and financing of the Facility, except as specifically stated within this Order.
4. Petitioner shall not exercise an Indiana public utility’s rights, powers, and privileges of eminent domain and of exemption from local zoning, land use requirements, land use ordinances, and construction-related permits in the operation and construction of the Facility. Petitioner shall retain the right to a limited use of the public right-of-way within the Facility area as described above.
5. Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the Facility without further Order of the Commission. The gross revenues generated by sales for resale of the electricity generated by the Facility are adjudged to be exempt from the public utility fee prescribed by Ind. Code ch. 8-1-6.
6. Petitioner shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order.



7. The information filed in this Cause pursuant to the Motion for Protection under Ind. Code § 5-14-3-4 is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

8. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:**

**APPROVED:** \_\_\_\_\_

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

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**Dana Kosco**  
**Secretary of the Commission**